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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 18-IB25

May 15, 2018

VIA EMAIL

Mr. Eric Keebler
PO Box 5339
Wilmington, DE 19808-0339
eric@efkeebler.com

RE: FOIA Correspondence Regarding the City of Newark

Dear Mr. Keebler:

We write regarding your correspondence, received on May 4, 2018, alleging that the City of Newark (“City”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). We treat your correspondence as a petition for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur (“Petition”). For the reasons set forth below, we conclude that your Petition is moot.

On April 11, 2018, at approximately 5:01 PM, you submitted a FOIA request to the City via email for “a copy of any and all minutes, proceedings, and/or other documents related to Newark City Council’s choice of speed limit, and speed limit sign size and placement, for the section of East Delaware Avenue between Tyre Avenue and Library Avenue, pursuant to Newark’s Code of Ordinances Sec. 20-19 (a).” On May 4, 2018, the City’s FOIA Coordinator, Ms. Renee Bensley, sent you an email stating:

I apologize for the delay in responding. The City has no documents that are responsive to your request. Additionally, the stretch of road referenced falls under Sec. 20-19(b), not 20-19(a) as Delaware Avenue is a state maintained road. With this email, your request is considered closed.¹

¹ You state that the response was difficult to read because the text appears as light gray on a white background. While we accept that the text may appear as such when you view it, we note that the text is clearly visible in your submission to this Office as black text on a white background.

That same day, you submitted a petition to this Office, alleging that the City violated FOIA by failing to provide a response within 15 business days.² You state that you did not receive a response until after you submitted a complaint to the City Solicitor, Mr. Paul Bilodeau, Esq.³ You ask this Office to “require the City to make whatever changes may be necessary to rigorously comply with the Freedom of Information Act.”

Based on the facts as presented to this Office, it is our determination that your petition is moot, as the City has provided a response to your April 11 FOIA request.⁴ To the extent you believe prospective relief beyond this Office’s jurisdiction to be warranted, you may seek judicial review of your claim.⁵

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

APPROVED BY:



Allison E. Reardon, State Solicitor

cc: Paul Bilodeau, Esq. (via email)

² See 29 Del. C. § 10003(h)(1) (“The public body shall respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof . . .”).

³ You also stated that the City failed to acknowledge the initial receipt of your request, and that it should be standard practice for government agencies to acknowledge receipt of such requests. We nevertheless note that FOIA contains no such requirement, except as provided in 29 Del. C. § 10003(h)(1).

⁴ See *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017) (“[T]he Court finds that any claimed violation regarding the Sample E-mails is moot because Appellants already possess them.”); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Bd.*, 1994 WL 274295, at *13 (“Because the documents that are the subject of [plaintiffs’] FOIA requests were turned over to the plaintiffs on August 13, 1993, that claim is moot.”). We deem the City’s response to have been completed on May 4, 2018, the date in which the City’s FOIA Coordinator informed you that it has no documents responsive to your request.

⁵ See 29 Del. C. § 10005(d) (“Remedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief. *The court may award attorney fees and costs to a successful plaintiff of any action brought under this section.*”) (emphasis added).